

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

RECEIPT # _____
AMOUNT \$ 114
SUMMONS ISSUED 167
LOCAL RULE 4.1 _____
WAIVER FORM _____
MCF ISSUED _____
BY DPTY. CLK. SP
DATE 7/26/05

BENOIT BUNDU,

Plaintiff,

v.

FRANCOISE BUNDU,

Defendant.

Case No.

Formerly Middlesex Probate and
Family Court Case No. 00D-1927-D

05-10840 RWZ

NOTICE OF REMOVAL

MAGISTRATE JUDGE Soroker

The United States Department of Homeland Security, Citizenship and Immigration Services ("CIS"), by and through its attorneys, Michael J. Sullivan, United States Attorney for the District of Massachusetts, and Gregg Shapiro, Assistant United States Attorney, petitions this Court, pursuant to 28 U.S.C. §§ 1442(a)(1) and 1446, to remove this matter from the Probate and Family Court of the Commonwealth of Massachusetts based on a subpoena and order that CIS has received from plaintiff Bundu. In support of this petition, CIS states as follows:

1. CIS is a component of the Department of Homeland Security, an agency of the United States.
2. In late January or early February 2005, plaintiff Bundu served on CIS a subpoena seeking information from the CIS immigration file of defendant Francoise Bundu. See Attachment A.
3. On March 24, 2005, plaintiff Bundu filed a motion asking that the Probate and Family Court direct CIS to release defendant Bundu's immigration file to his counsel. See

Attachment B. Plaintiff Bundu did not serve his motion on CIS. On March 25, 2005, the Probate and Family Court signed an order directing that plaintiff's counsel be allowed to see a copy of CIS documents pertaining to defendant Bundu. See Attachment C. On or about March 31, 2005, plaintiff Bundu provided CIS with a copy of his motion and the Probate and Family Court order.

4. This action is removable to this Court, pursuant to 28 U.S.C. § 1442(a)(1), because plaintiff Bundu is seeking to enforce a subpoena served on CIS, a component of an agency of the United States. Moreover, the removal of this action is timely under the provisions of 28 U.S.C. § 1446(b), because less than 30 days have passed since plaintiff Bundu provided CIS with a copy of the Probate and Family Court's order. See Swett v. Schenk, 792 F.2d 1447 (9th Cir. 1986).

5. Copies of all pleadings received by the United States are attached hereto.


Respectfully submitted,

UNITED STATES DEPARTMENT OF
HOMELAND SECURITY, CITIZENSHIP AND
IMMIGRATION SERVICES

By its attorneys,

MICHAEL J. SULLIVAN
United States Attorney

Dated: April 26, 2005



GREGG SHAPIRO
Assistant United States Attorney
Office of the United States Attorney
One Courthouse Way, Suite 9200
Boston, MA 02210
(617) 748-3366

Certificate of Service

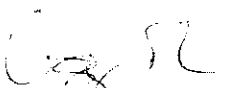
I hereby certify that, on April 26, 2005, I caused copies of the foregoing Notice of Removal to be served by first-class mail, postage pre-paid, on the following:

Lisa Belmarsh, Esq.
Landry and Associates
22 Union Avenue
Sudbury, MA 01776-2258

Mary Beth Sweeney, Esq.
Atwood & Cherny, P.C.
101 Huntington Avenue, 25th Floor
Boston, MA 02199

Counsel for Francoise Bundu

Counsel for Benoit Bundu



Gregg Shapiro

JAN-28-2005 FRI 04:37 PM

FAX NO.

P. 03

**COMMONWEALTH OF MASSACHUSETTS
The Trial Court
Probate & Family Court Department**

MIDDLESEX DIVISION

DOCKET #00D-1927-D

BENOIT BUNDU

PLAINTIFF

v.

FRANCOISE BUNDU

DEFENDANT

DEPOSITION SUBPOENA

AND

**SUBPOENA DUCES TECUM
KEEPER OF RECORDS
UNITED STATES DEPARTMENT
OF IMMIGRATION AND
NATURALIZATION**

To: Keeper of the Records
Attention: Mr. Cashman
United States Citizenship and
Immigration Services
JFK Federal Building Room #425
Boston, MA 02203

RECEIVED BY THE RECORDS OFFICE

DATE: 01/28/2005

CONTACT: 617-646-2200

GREETINGS,

YOU ARE HEREBY COMMANDED, in the name of the Commonwealth of Massachusetts in accordance with the provisions of Rules 30(a) and 45 of the Massachusetts Rules of Domestic Relations Procedure, to appear and testify on behalf of Plaintiff, Benoit Bundu before a Notary Public in and for the Commonwealth of Massachusetts, or before some other officer authorized by law to administer oaths, commencing at Atwood & Cherny, P.C., 101 Huntington Avenue, 25th Floor, Boston, MA 02199 on **February 8, 2005 at 10:00 a.m.**, and there to testify as to your knowledge at the taking of the deposition in the above-entitled action.

And you are further required to bring with you:

- See Attached Schedule A.
- In lieu of appearance you may forward the documents to the attorneys for the Plaintiff, Benoit Bundu, at Atwood & Cherny, P.C., 101 Huntington Avenue, 25th Floor, Boston, Massachusetts, by the end of the business day on Monday, February 7, 2005.


HEREOF FAIL NOT, as you will answer your default under the pains and penalties in the law in that behalf made and provided.

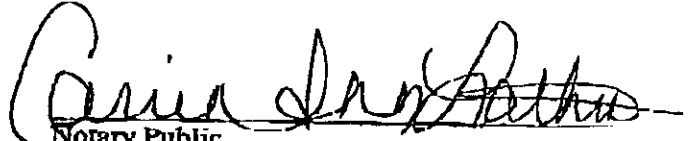
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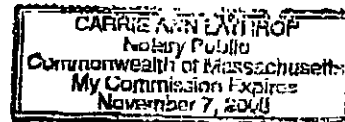
FAX NO.

P. 04

Dated at: Boston, MA this 28th day of January, A.D. 2005.


Mary Beth Sweeney, Esquire
Attorney for Benoit Bundu
Atwood & Cherry, P.C.
25th Floor
101 Huntington Avenue
Boston, MA 02115
(617) 262-6400


Notary Public
My Commission Expires: _____



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FAX NO

P. 05

BUNDU v. BUNDU
SCHEDULE A

1. Any and all documents pertaining to Francoise Bundu (file Number A # 076-964-955)(date of birth 11/13/67)(social security # 025-74-1771) that you have in your possession, including but not limited to any applications and/or petitions for visas, residency status, or requests for entry into this country.
2. Any and all documents and/or records concerning any actions that have been taken, or are scheduled to be taken, by the Immigration Court concerning Francoise Bundu;
3. Any and all documents and/or records reflecting any motions or pleadings submitted on behalf of Francoise Bundu.
4. Any and all documents and/or records evidencing any AVOWA petitions filed on the behalf of Francoise Bundu.
5. Any and all documents and/or records reflecting any pending actions on the immigration status of Francoise Bundu, including but not limited to any scheduled hearings.
6. Copies of any audio cassettes or other documentation or tangible thing which reflects a hearing that was held at your office on this matter on or about February 4, 2004.

COMMONWEALTH OF MASSACHUSETTS
The Trial Court
Probate & Family Court Department

MIDDLESEX DIVISION

DOCKET #00D-1927-D

BENOIT BUNDU

PLAINTIFF

v.

FRANCOISE BUNDU,

DEFENDANT

ORDER

**PLAINTIFF'S EX PARTE MOTION
FOR COURT ORDER ALLOWING RELEASE
OF DEFENDANT'S IMMIGRATION FILE**

Mary Beth Sweeney, ESg

After hearing on the matter, it is hereby **ORDERED** that counsel for the Plaintiff, Benoit Bundu, be allowed to have a copy of any and all documents pertaining to the Defendant, Francoise Bundu, (file Number A # 076-964-955)(date of birth 11/13/67)(social security # 025-74-1771), in the possession of the United States Office of Homeland Security and/or the United States Citizenship and Immigration Services.

Angela M. O'Donoghue
Probate & Family Court, Justice

COMMONWEALTH OF MASSACHUSETTS
The Trial Court
Probate & Family Court Department

MIDDLESEX DIVISION

DOCKET #00D-1927-D

BENOIT BUNDU

PLAINTIFF

v.

FRANCOISE BUNDU,

DEFENDANT

PLAINTIFF'S MOTION
FOR COURT ORDER ALLOWING THE OFFICE OF IMMIGRATION
AND NATURALIZATION SERVICES TO RELEASE A COPY OF
OF DEFENDANT'S IMMIGRATION FILE
TO COUNSEL FOR THE PLAINTIFF

NOW COMES the Plaintiff, Benoit Bundu (hereinafter the "Husband") and respectfully requests this Court grant his Motion For Court Order Allowing The Office of Immigration And Naturalization Services to Release A copy of Defendant's Immigration File to Counsel for the Plaintiff:

1. The Husband and Francois Bundu (hereinafter the "Wife") were married on May 21, 1999 in Cambridge, Massachusetts.
2. The Husband is a naturalized citizen of the United States and the Wife is a resident alien of the Congo and petitioning to obtain citizenship in the United States.
3. The parties have twin children: Maya and Betoya Bundu, born on October 30, 2003.
4. Some time in January, 2004, and in violation of Court orders the Wife kidnapped the parties children and fled first to Belgium and then to the Congo.
5. Husband has not seen his twins for over a year.

3/25/05
MIDDLESEX, SS
PROBATE COURT
A TRUE COPY ATTESTED
John R. Guarnieri
REGISTER

FILED MAR 25 2005

March 25, 2005
The Above Motion is Hereby
Allowed By
Justice of Probate (3)

6. When the Husband learned the Wife was in Belgium he initiated Hague Convention Proceedings to bring the children back to the United States. The Wife learned of the proceedings and fled to the Congo, which is not a signatory to the Hague Convention.
7. The Wife's actions constitute kidnapping.
8. This Court (McSweeney, J.) awarded sole legal and physical custody of the children to the Father in March, 2005. The Court issued a bench warrant for the Wife's arrest and ordered the Wife to return to the United States with the children.
9. The Wife has ignored the Court orders.
10. The Father has been working with agencies for over a year to bring the children back to the United States.
11. Father subpoenaed the Wife's INS file on January 28, 2005 asking for a copy of Wife's immigration file. The records were due on February 5, 2005 in response to the subpoena;
12. Husband's Counsel then began inquiring of INS as to where the documents were;
13. On March 23, 2005, Husband's counsel was informed by INS that the request was responded to in writing to Husband's counsel requiring a Court Order before the records could be released. That INS letter dated February 2, 2005 was returned to the INS (having never reached Husband's counsel) as INS utilized the wrong zip code for counsel's address;
14. Husband understands Wife has a proceeding scheduled on February 5, 2005 and there is a possibility the Wife will be returning to the US to attend the hearing;
15. Accordingly, it is imperative that the Husband be permitted to receive a copy of the Wife's INS file so that he may understand the nature of any proceedings occurring in

the INS as it may relate to his children.

NOW WHEREFORE, the Husband requests this Honorable Court grant an Order releasing the Defendant's Immigration file.

Respectfully submitted,
Benoit Bundu,
By his attorneys,



Mary Beth Sweeney, BBO #641436
Thomas D. Ritter, BBO # 654323
Atwood & Cherny, P.C.
101 Huntington Avenue
25th Floor
Boston, MA 02199
(617) 262-6400

Dated: March 24, 2005

CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

BENOIT BUNDU,

Middlesex

(b) County of Residence of First Listed Plaintiff
(EXCEPT IN U.S. PLAINTIFF CASES)

DEFENDANTS

FRANCOISE BUNDU

Middlesex

County of Residence of First Listed
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

(c) Attorney's (Firm Name, Address, and Telephone Number)
Benoit Bundu, Esq., 101 Huntington Ave.,
Boston, MA 02116
Francoise Bundu, Lisa Belmar, Esq.,
Landry & Associates, 22 Union Avenue,
Sudbury, MA 01776

Attorneys (If Known) For USA: Dept of Homeland Security
Gregg Shapiro, AUSA, U.S. Attorney's Office, 1 Courthouse Way
Moakley U.S. Courthouse
Boston, MA 02210
tel: (617) 748-3100

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
2 U.S. Government Defendant
3 Federal Question (U.S. Government Not a Party)
4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | DEF | DEF |
|---|-----|-----|
| Citizen of This State | 1 | 4 |
| Citizen of Another State | 2 | 5 |
| Citizen or Subject of a Foreign Country | 3 | 6 |
| Incorporated or Principal Place of Business In This State | | 4 |
| Incorporated and Principal Place of Business In Another State | | 5 |
| Foreign Nation | | 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
110 Insurance	PERSONAL INJURY	610 Agriculture	422 Appeal 28 USC 158	400 State Reapportionment
120 Marine	310 Airplane	620 Other Food & Drug	423 Withdrawal 28 USC 157	410 Antitrust
130 Miller Act	315 Airplane Product Liability	625 Drug Related Seizure of Property 21 USC		430 Banks and Banking
140 Negotiable Instrument	320 Assault, Libel & Slander	630 Liquor Laws		450 Commerce/ICC Rates/etc.
150 Recovery of Overpayment & Enforcement of Judgment	330 Federal Employers' Liability	640 R.R. & Truck	PROPERTY RIGHTS	460 Deportation
151 Medicare Act	340 Marine	650 Airline Regs.	820 Copyrights	470 Racketeer Influenced and Corrupt Organizations
152 Recovery of Defaulted Student Loans (Excl. Veterans)	345 Marine Product Liability	660 Occupational Safety/Health	830 Patent	810 Selective Service
153 Recovery of Overpayment of Veteran's Benefits	350 Motor Vehicle	690 Other	840 Trademark	850 Securities/Commodities/Exchange
160 Stockholders' Suits	355 Motor Vehicle Product Liability			875 Customer Challenge 12 USC 3410
190 Other Contract	360 Other Personal Injury	LABOR	SOCIAL SECURITY	891 Agricultural Acts
195 Contract Product Liability		710 Fair Labor Standards Act	861 HIA (1395ff)	892 Economic Stabilization Act
		720 Labor/Mgmt. Relations	862 Black Lung (923)	893 Environmental Matters
		730 Labor/Mgmt. Reporting & Disclosure Act	863 DIWC/DIWW (405(g))	894 Energy Allocation Act
		740 Railway Labor Act	864 SSID Title XVI	895 Freedom of Information Act
		790 Other Labor Litigation	865 RSI (405(g))	900 Appeal of Fee Determination Under Equal Access to Justice
		791 Empl. Ret. Inc. Security Act	FEDERAL TAX SUITS	950 Constitutionality of State Statutes
			870 Taxes (U.S. Plaintiff or Defendant)	890 Other Statutory Actions
			871 IRS - Third Party 26 USC 7609	

V. ORIGIN (PLACE AN "X" IN ONE BOX ONLY)

- 1 Original Proceeding
2 Removed from State Court
3 Remanded from Appellate Court
4 Reinstated or Reopened
5 Transferred from another district (specify)
6 Multidistrict Litigation
7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

(Cite the U.S. Civil Statute under which you are filing and write brief statement of cause.)
Do not cite jurisdictional statutes unless diversity.)
Removal of Family Court matter pursuant to 28 U.S.C., s. 1442 based on subpoena served on third-party Defendant Department of Homeland Security.

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

This form was electronically produced by Elite Federal Forms, Inc.

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS1. TITLE OF CASE (NAME OF FIRST PARTY ON EACH SIDE ONLY) Benoit Bindu v. Francoise Bundu

2. CATEGORY IN WHICH THE CASE BELONGS BASED UPON THE NUMBERED NATURE OF SUIT CODE LISTED ON THE CIVIL COVER SHEET. (SEE LOCAL RULE 40.1(A)(1)).

- I. 160, 410, 470, R.23, REGARDLESS OF NATURE OF SUIT.
- X II. 195, 368, 400, 440, 441-444, 540, 550, 555, 625, 710, 720, 730, 740, 790, 791, 820*, 830*, 840*, 850, 890, 892-894, 895, 950. *Also complete AO 120 or AO 121 for patent, trademark or copyright cases
- III. 110, 120, 130, 140, 151, 190, 210, 230, 240, 245, 290, 310, 315, 320, 330, 340, 345, 350, 355, 360, 362, 365, 370, 371, 380, 385, 450, 891.
- IV. 220, 422, 423, 430, 460, 510, 530, 610, 620, 630, 640, 650, 660, 690, 810, 861-865, 870, 871, 875, 900.
- V. 150, 152, 153.

3. TITLE AND NUMBER, IF ANY, OF RELATED CASES. (SEE LOCAL RULE 40.1(G)). IF MORE THAN ONE PRIOR RELATED CASE HAS BEEN FILED IN THIS DISTRICT PLEASE INDICATE THE TITLE AND NUMBER OF THE FIRST FILED CASE IN THIS COURT.

N/A

4. HAS A PRIOR ACTION BETWEEN THE SAME PARTIES AND BASED ON THE SAME CLAIM EVER BEEN FILED IN THIS COURT?

YES ☐ X NO

5. DOES THE COMPLAINT IN THIS CASE QUESTION THE CONSTITUTIONALITY OF AN ACT OF CONGRESS AFFECTING THE PUBLIC INTEREST? (SEE 28 USC §2403)

YES ☐ X NO

IF SO, IS THE U.S.A. OR AN OFFICER, AGENT OR EMPLOYEE OF THE U.S. A PARTY?

YES ☐ NO ☐

6. IS THIS CASE REQUIRED TO BE HEARD AND DETERMINED BY A DISTRICT COURT OF THREE JUDGES PURSUANT TO TITLE 28 USC §2284?

YES ☐ X NO

7. DO ALL OF THE PARTIES IN THIS ACTION, EXCLUDING GOVERNMENTAL AGENCIES OF THE UNITED STATES AND THE COMMONWEALTH OF MASSACHUSETTS ("GOVERNMENTAL AGENCIES"), RESIDING IN MASSACHUSETTS RESIDE IN THE SAME DIVISION? - (SEE LOCAL RULE 40.1(D)).

YES X ☐ NO

A. IF YES, IN WHICH DIVISION DO ALL OF THE NON-GOVERNMENTAL PARTIES RESIDE?

EASTERN DIVISION X CENTRAL DIVISION ☐ WESTERN DIVISION ☐

B. IF NO, IN WHICH DIVISION DO THE MAJORITY OF THE PLAINTIFFS OR THE ONLY PARTIES, EXCLUDING GOVERNMENTAL AGENCIES, RESIDING IN MASSACHUSETTS RESIDE?

EASTERN DIVISION CENTRAL DIVISION ☐ WESTERN DIVISION ☐

(PLEASE TYPE OR PRINT)

ATTORNEY'S NAME Gregg Shapiro, Assistant U.S. AttorneyADDRESS U.S. Attorney's Office, 1 Courthouse Way, Suite 9200, Boston, MA 02210TELEPHONE NO. (617) 748-3366

(CATEGORY SHEET Pg2.wpd - 11/27/00)